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181504Z Aug 05

UNCLAS SECTION 01 OF 03 PARIS 005573

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FROM USMISSION UNESCO
STATE FOR IO/T, ECA CRAVEN/FARRELL
STATE PLEASE PASS TO ROBIN GILCHRIST, DEPT.
EDUCATION

E.O. 12958: N/A

TAGS: [SCUL](#) [UNESCO](#)

SUBJECT: USUNESCO: CROSS-WISE ON BORDER? NEW PUSH
FOR CONVENTION LIKELY AT GENERAL CONFERENCE DEBATE
ON GUIDELINES FOR "QUALITY PROVISION IN CROSS-BORDER
HIGHER EDUCATION"

1. SUMMARY: After a year of discussion and drafting meetings, the UNESCO/OECD non-binding guidelines for cross border quality provision in higher education went before the 171st UNESCO Executive Board for its blessing and instead got sidelined for further discussion at the upcoming General Conference in October. A subsequent agreement by UNESCO and the OECD to fix procedural errors so the guidelines could be considered for formal adoption at the 2007 General Conference fell apart in late July when Director-General Matsuura decided instead to recommend adopting a "secretariat" document that incorporates the views of any member states that felt left out of the year-long drafting process. This about-face caught the new ADG/Education Peter Smith off guard as the Director-General acted without consulting him first. Matsuura did consult with the Japanese delegation which strongly favors the DG's approach that will opens up the text at the General for comment by any of the 191 member states. And this raises the possibility that those agitating all along for a legally-binding convention instead - such as the 29-million-member Education International union - could get their way. END SUMMARY.

2. Prior to UNESCO's 171st Executive Board in April 2005, the joint UNESCO/OECD guidelines for quality provision in cross-border higher education had wound through a year-long drafting process at UNESCO headquarters in Paris and at a meeting in Tokyo. Not long before the UNESCO Executive Board began, the OECD approved the text as it stood after the last round of comments that ended March 15. In that round, the U.S. offered no further suggestions, and that was duly noted in documents considered by the OECD.

3. Before the April meeting, however, a little drama erupted backstage at UNESCO when someone -- suggestions were that it was the Legal Adviser's Office -- tried to change the wording of the document before it went to the printers in ways that would have made the guidelines more binding and regulatory. USDel expressed displeasure when this was learned - as did Japan - and the Secretariat scrambled to solve the problem.

4. Going into the Executive Board's debate on the Cross-Border guidelines, USDel's instructions were to emphasize the voluntary nature of the guidelines and clarify the procedures for endorsement at the next General Conference in the fall.

5. During the debate in the program committee, UNESCO's legal adviser said the correct procedure had not been followed for the Board to adopt official UNESCO guidelines and so, the Executive Board had two options. The first would be to recommend that the October 2005 General Conference consider whether this issue should be subject to "regulation," whether binding or non-binding. With this approach, adoption of the guidelines would be postponed until the 2007 general conference at the earliest. Alternatively, the legal adviser said, the Executive Board could authorize the secretariat to adopt the guidelines and send them to relevant institutions for consideration; but in this case - absent a General Conference mandate -- they would not be official UNESCO guidelines.

6. Most delegations agreed that the guidelines should be adopted by the October 2005 General Conference, given the urgent need to protect students and the broad support enjoyed by this

initiative. Many states, such as Australia, emphasized the importance of non-binding guidelines, a theme echoed by Ambassador Oliver who also highlighted the importance of cooperation with the OECD (which had just approved the draft guidelines without any attempt to alter the non-binding nature of them.) Noting that the guidelines were meant to be informal, rather than regulatory, the Ambassador asked that language to that effect be included in the draft decision.

17. Ultimately, the draft decision invited "the Director General to inscribe on the provisional agenda of the 33rd session of the General Conference an item with a view to the further discussion of the non-binding draft guidelines," according to the UNESCO document "Decisions of the Executive Board."

18. In June, new ADG/Education Peter Smith and the OECD's head of education Barry McGaw met and agreed that the guidelines would proceed through a formal process that would satisfy the UNESCO lawyers and then return to the 2007 General Conference for adoption by the member states.

19. In late July, however, the Director-General told Smith that he had decided that the best approach was to go the route of a "secretariat" document. According to Smith, the discussion came after the Director-General had already made his wishes known to others in the organization and the new document with the new draft decision was sent to press. The lack of prior consultation with the ADG/Education was confirmed when USDel spoke with legal advisor John Donaldson who already knew of the DG's decision when contacted by us. Specifically, the draft decision, as it now stands, will invite the Director-General to issue guidelines taking the member states' thoughts into account.

110. Smith spoke with the OECD's Barry McGaw and came away with the impression that this approach is acceptable to the OECD.

111. Comment: This new development raises a number of issues. Any way we approach this - either with a secretariat document or by starting down the road of

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formal codification at the 2007 General Conference - there is the risk that those still agitating for binding rules and, ideally in their eyes, a legally binding international convention will get the upper hand. We will now most likely hear from those who view these guidelines as the first step toward a convention that would block for-profit educational providers from operating internationally and that would interfere with educational trade issues currently being negotiated at the World Trade Organization (WTO). End comment.

112. One of the loudest voices agitating for a convention is also one with the motive and the opportunity to force a convention upon UNESCO: the 29-million-member Education International (EI) union that claims 348 organizations in 166 countries. At an EI "mobilization" meeting held at UNESCO in April, Georges Haddad, the director of UNESCO's Higher Education division, joined the line up of speakers. One speaker called for stronger action in what he described as a "clash of values" between the good ("those who see education as a public service") and the bad ("those who look at it as a commercial service.") Comments from the participants indicated they don't see room for both. Speakers warned of such dangers as American-based University of Phoenix and Sylvan learning centers that they branded as guilty of being for-profit providers.

113. A participant from Morocco proclaimed that "EI (Education International) must stand firm" and added that Africa and the Arab States face the greatest risk - a theme that others from Africa repeated throughout the two-day discussion. Another participant, speaking of the draft cross-border guidelines, expressed "hope this is a stepping stone to get a real instrument."

114. The "real instrument" they envision is spelled out in EI's July 2004 "Resolution for a New International Instrument for Higher Education" that cuts a wide swath in the pattern of the on-going cultural diversity debate. The text can be found at

115. The EI resolution ends with a call to its

members and affiliates "to prepare a draft of the new instrument" and "to campaign and lobby for the adoption of the new instrument."

¶16. There is a risk that a secretariat document could cause the same problems as the Millennium Development Goals where UN employees took the seven principles approved by the member states, tacked on a rather significant eighth goal on aid harmonization that none of the countries debated or adopted.

¶17. But a positive aspect of a secretariat document in this instance would be to keep it as informal suggestions of best practices. Our argument all along against binding rules has been that the purpose of these guidelines is to share what we know about providers of educational services through such means as a web portal to help countries make informed choices and to thwart rogue operators. This is especially true in developing countries that are most often the targets of scam operations.

¶18. By taking the route of a secretariat document, we help countries strengthen their education systems without stifling the flow of information and ideas. We avoid two more years of discussion in the context of formal codification and instead have what is clearly labeled a menu of opportunities for countries to tailor to what will help them strengthen education in their own countries. And we can highlight examples such as Nigeria to diffuse the idea of a convention

¶19. During meetings at the Institute of International Education Planning at UNESCO on June 13 and 14, education experts from around the world discussed the cross-border quality issue. And during that discussion we saw an example of the positive outcomes that can happen when suggested good codes of practice are made available and countries can then tailor them to their needs -- the very point the United States and other member states have made in resisting those who want strict, inflexible rules dictated to countries.

¶20. Peter Okebukola, the Executive Secretary of Nigeria's National Universities Commission, said they had been inspired by the UNESCO/OECD draft guidelines and have already used them to develop Nigeria's own rules for quality provision.

¶21. COMMENT. This further bolsters our case against the growing trend of McConventions at UNESCO -- legally binding documents with profound implications for the world community that are slapped together by non-lawyers like Big Macs on a conveyor belt. UNESCO can be encouraged to seize this as an opportunity to get out ahead and promote these best practices, inspiring more countries to take the initiative as Nigeria is doing, and harnessing the collective strength of the member states to form a flying wedge of progress toward UNESCO's goals instead of getting tangled in issues outside its mandate that deplete energy, resources and credibility. END COMMENT.

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